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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
	:
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:
	:
	:
Debtors.	:
-----X	

Chapter 11  
Case No. 18-23538 (RDD)  
(Jointly Administered)

**RESERVATION OF RIGHTS OF HAIER US APPLIANCE  
SOLUTIONS, INC. D/B/A GE APPLIANCES IN RESPONSE TO  
DEBTORS' NOTICE OF ASSUMPTION AND ASSIGNMENT OF  
ADDITIONAL EXECUTORY CONTRACTS**

Haier US Appliance Solutions, Inc. d/b/a GE Appliances ("GEA"), by and through its undersigned counsel, hereby files this Reservation of Rights to (the "Reservation") to the Debtors' Notice of Assumption and Assignment of Additional Executory Contracts (ECF No. 3761) (the

“Third Assumption Notice”),<sup>1</sup> filed by the above-captioned Debtors (collectively, the “Debtors”).<sup>2</sup>

In support thereof, GEA respectfully states as follows:

### **STATEMENT OF OBJECTION**

1. On November 19, 2018, the Court entered the *Order Approving Global Bidding Procedures and Granting Related Relief* (ECF No. 816), which contemplates a process for the assumption of executory contracts and unexpired leases.

2. On January 18, 2019, the Debtors filed a Notice of Successful Bidder and Sale Hearing (ECF No. 1730), stating that an affiliate of ESL Investments, LLC (the “Purchaser”) was the successful bidder for the Global Assets (as defined therein).

3. On January 18, 2019, the Debtors filed the First Assumption Notice, which lists a number of purported executory contracts and leases that the Debtors claim are subject to possible assumption and assignment to the Purchaser in connection with the sale.

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<sup>1</sup> Debtors previously filed a number of other notices related to executory contracts, including the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in connection with Global Sale Transaction* (ECF No. 1731) (the “First Assumption Notice”) and the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in connection with Global Sale Transaction* (ECF No. 1774) (the “Second Assumption Notice,” together with the First Assumption Notice, the “Prior Assumption Notices”).

<sup>2</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SRC Sparrow 1 LLC (None); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); SRC Sparrow 2 LLC (None); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); SRC O.P. LLC (None); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); SRC Facilities LLC (None); and SRC Real Estate (TX), LLC (None). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

4. On January 23, 2019, the Debtors filed the Second Assumption Notice, which lists a number of additional purported executory contracts and leases that the Debtors claim are subject to possible assumption and assignment to the Purchaser in connection with the sale.

5. On January 25, 2019, GEA filed its Objection to the Prior Assumption Notices and the assumption of certain contracts related to GEA (ECF No. 1860) (the “Objection”).

6. On May 8, 2019, the Debtors filed the Third Assumption Notice, which lists a number of additional purported executory contracts and leases that the Debtors claim are subject to possible assumption and assignment to the Purchaser in connection with the sale.

7. The Prior Assumption Notices and the Third Assumption Notice contain multiple entries related to a relationship between Debtor A&E Factory Service, LLC and GEA:

- (a) First Assumption Notice Nos. 3072 and 3073, Page 135 and 136: [No Contract Title] with a proposed cure amount of \$0.
- (b) Second Assumption Notice No. 239, Page 18: “Sixth Amendment to Service Agreement” with a proposed cure amount of \$0.
- (c) Third Assumption Notice Nos. 2 and 3, Page 6: [No Contract Title] with a proposed cure amount of \$0.

8. Because the notices did not contain the name of the agreement and because there are duplicate entries, GEA was left to guess at the agreement referenced. GEA contacted Debtors’ counsel, and it appears the entries referenced above are all part of the same ongoing Service Agreement between GEA and the Debtors (the “Amended A&E Service Agreement”).

9. Although the counterparty for the Amended A&E Service Agreement is listed as General Electric Company, the Amended A&E Service Agreement was previously assigned to GEA. *See Declaration of Mason Carrico* ¶ 4 (ECF No. 1860-1).

10. As of the Petition Date, based on current calculations, there does not appear to be a balance owed to GEA under the Amended A&E Service Agreement.

11. In concept, GEA does not object to the assumption and assignment of the Amended A&E Service Agreement. GEA tenders this Reservation of Rights simply to allow for a discussion period with the Debtors to ensure that there is agreement on the terms of the Amended A&E Service Agreement, as there appear to be further amendments beyond those referenced by the Debtors. Moreover, GEA must confirm that no other agreements are contemplated as part of the assumption and assignment. Finally, because the Amended A&E Service Agreement was assigned to GEA, any assignment and assumption should reflect GEA as the correct counterparty.

12. The Prior Assumption Notices identify several other contracts related to GEA as addressed and defined in the Objection, and this Reservation does not waive or otherwise affect GEA's Objection with regard to the Amended Master Supply Agreement or the Sears Service Agreement<sup>3</sup> as defined therein, or with respect to any other agreements between GEA and Debtors.

13. GEA reserves the right to amend this Reservation or the Objection.

14. GEA holds claims against the Debtors, and it reserves its rights in connection with those claims, including but not limited to all reclamation claims, administrative claims (including those under 11 U.S.C. § 503(b)(9)) or in connection with any prepetition or post-petition transactions, and all prepetition or post-petition claims of any type. GEA also reserves all rights in connection with any claims made by the Debtors.

15. Finally, GEA reserves the right to request additional adequate assurance information.

16. Accordingly, while GEA intends to discuss these issues with the Debtors and it believes they will be resolved amicably, GEA reserves all rights in connection with the Objection and as set forth herein.

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<sup>3</sup> The Sears Service Agreement was listed in Debtors' Notice of Rejection of Executory Contracts (ECF No. 3268).

**WHEREFORE,** GEA reserves all rights in connection with the Objection and as set forth herein and requests the Court award it such other and further relief as the Court deems just and proper.

Dated: New York, New York  
May 16, 2019

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